

ORIGINAL

**VoiceStream**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

December 4, 2000

The Honorable William E. Kennard  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

EX PARTE OR LATE FILED

Re: IB Docket No. 00-187 /

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Dear Chairman Kennard:

Last Thursday, we learned with great dismay of Senator Hollings' letter to you, dated November 30, 2000, asking that VoiceStream be barred from the upcoming PCS auction. Exclusion of VoiceStream from the auction would be extremely unfair and harmful, not only to our shareholders but to consumers, who only stand to benefit by our ability to acquire the spectrum we need to complete our national GSM footprint.

We do appreciate the Commission's action last Friday to approve VoiceStream's participation in Auction 35. But, we should respond to Senator Hollings' letter.

The foreign ownership issues Senator Hollings wishes to address deserve to be heard in a full and fair manner, and they will be. Indeed, VoiceStream recently consented to the Senator's request for a thirty-day extension of time to allow him to comment upon our pending merger with Deutsche Telekom AG ("DT"). In that proceeding, and under the Commission's standard auction procedures, there will be ample opportunity for comment on our foreign ownership if and when we become a winning bidder and submit a long form application for licenses. In our Form 175, we certified compliance with the Commission's foreign ownership limitations and provided the factual basis under prior FCC rulings governing our company for such certification. We firmly believe that the Commission will agree with our conclusion. Prior to accepting the DT investment in September, we fully briefed the International Bureau. Nothing has changed since that time other than a slight dilution of our foreign ownership.

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Senator Hollings argues, first, that the \$5 Billion investment by DT and associated contractual provisions under our merger agreement transform VoiceStream into a representative of DT and thereby of the German Government. Second, the Senator claims that the \$5 Billion investment by DT exceeds the 25 percent ownership threshold contained in Section 310(b)(4) of the Communications Act by itself. Let me address each claim in turn.

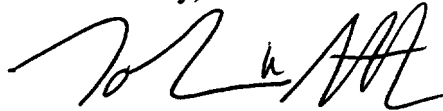
Certain provisions in our merger agreement with DT spell out how we will cooperate with DT in the upcoming auctions in order to protect its investment. These provisions cannot and will not turn VoiceStream into "merely a Deutsche Telekom agent." Our merger agreement provides that at all times VoiceStream shall remain in control of operations.

With respect to auctions, the agreement provides that VoiceStream senior management "shall work with" DT's Acquisitions Committee in a cooperative fashion to develop a schedule of maximum amounts up to which VoiceStream may bid in the auction. If VoiceStream wants to bid in excess of those mutually agreed upon limits, it may do so with the consent of any one of the members of the Committee (which may be sought and/or granted by telephone). If such consent is not given within twenty-four hours, DT is deemed to have consented. There is nothing remarkable about these provisions and it in no way means that VoiceStream has ceded or will cede day-to-day operating control of the company to DT in violation of the Commission's rules. It is my personal experience that these types of provisions are common and it is my understanding that investor safeguards of this kind have been consistently upheld by the Commission under its licensee control requirements.

Senator Hollings' second point is that the 25 percent foreign ownership threshold of Section 310(b)(4) has been exceeded. We assure you that this assertion is not true. Neither the preferred shares DT holds relative to the company's overall capital stock nor any value-based assessment of its stake in the company approximates 25 percent, let alone the higher figure that the Senator suggests. DT made its \$5 Billion cash investment in exchange for 3,906,250 shares of preferred stock, convertible at DT's option into 31,250,000 shares of common stock, but only in the event the merger is terminated. At the time the investment was negotiated, DT's \$5 Billion investment represented approximately 11.5 percent of the company's assumed post-investment value. Today, DT's preferred shares amount to somewhat less than 11.5 percent of the company's capital stock on an as-converted basis, making DT our third largest shareholder. DT's current voting power as a holder of preferred stock is less than 1.7 percent. It simply cannot be said that DT owns 39 percent of VoiceStream. The present level of DT investment in VoiceStream, no matter how it is computed, is far below the 25 percent foreign ownership benchmark of Section 310(b)(4).

VoiceStream's participation in the upcoming spectrum auction will greatly benefit American consumers and will not violate applicable laws and policies. Senator Hollings' claims deserve to be heard and will be heard at the appropriate time provided under the Commission's Rules. No party will be prejudiced, as the Commission can withhold licenses from any party it finds to be unqualified at the end of the auction. Thank you for your consideration of our response to Senator Hollings' recent letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'John W. Stanton', with a stylized flourish at the end.

John W. Stanton  
Chairman and Chief Executive Officer

Cc: The Honorable Ernest F. Hollings  
The Honorable Susan Ness  
The Honorable Harold W. Furchtgott-Roth  
The Honorable Michael K. Powell  
The Honorable Gloria Tristani

### **Certificate of Service**

I, Robert Calaff, hereby certify that copies were sent by first-class mail, postage prepaid, on December 5, 2000, to the following:

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The Honorable Harold W. Furchtgott-  
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The Honorable Michael K. Powell  
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The Honorable Gloria Tristani  
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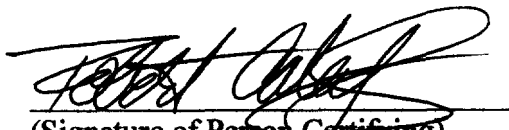
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(Signature of Person Certifying)